From: Dr. Charles Stewart
To: Microsoft ATR
Date: 1/28/02 7:25am
Subject: Microsoft settlement

Dear Sir/Madam,

I would like to submit this argument to the Microsoft settlement
consultation process (Tunney act), to the effect that the appeal court
justice in charge of the DOJ/Microsoft case chould overrule the
settlement and pursue a strong structural remedy, such as the
originally proposed breakup. This argument is available online,
together with comments from interested parties, at:
  http://www.advogato.org/article/425.html

I believe that it is the responsibility of the Department of Justice,
and not Microsoft, to protect the economic interests of the computer
industry by protecting competetion and innovation. The DOJ strongly
argued for this position in its suit against Microsoft, but in its
recent settlement it has reversed its position, apparently concluding
that what is good for Microsoft is good for the software industry. If
the DOJ truly believes this, then it should appeal the current
verdict. To reverse its previous legal position without arguing for
this reversal in court is unethical, because this constitutes a
vacation of its responsibility to uphold the public interest.

I think the above conclusion, that the DOJ has abdicated its position
as guardian of the public interest, is inescapable if we accept the
following theses:

1. Microsoft's responsibility to its shareholders entails its aggressive
exploitation of the whole of its competitive strengths: Microsoft has
pursued a clear and consistent position in court. While Microsoft's
performance in Judge Jackson's court may indicate that Microsoft
tampered with evidence, where it stands in respect to its position as
monopoly has been clearly argued with both conviction and
integrity. It is this: the lesson learned from IBM's troubles with
antitrust suits in the 1980s is that a dominant business in the
computer industry can only protect its shareholders interests by
maintaining its monopoly without being intimidated by the threat of
antitrust legislation.

2. In Microsoft's business, only the paranoid survive: Furthermore,
for Microsoft to maintain its monopolies in an industry that changes
as quickly as the computer industry means that it must extend its
monopoly to any new market whose products threaten to displace its
current monopolies. Microsoft understands that its responsibility to
shareholders requires it to leverage its existing monopoplies to

intimidate and undermine rivals in other markets whose products possess this power; this is the principal conclusion of Judge Jackson in the trial brought by the DOJ.

3. Microsoft's monopolies injure business innovation, technical innovation and price competition in the computer industry: Especially they undermine the competitive strengths of alternatives developed by companies too small to challenge Microsoft in the courts, such as Be's BeOS and Dave Winer's Frontier, and of contributions by developers in the free software community such as Linux and Zope.

4. To maintain competition in the markets in which Microsoft dominates through its advantages as a monopolist requires Microsoft to be successfully limited in the courts.

5. To restore competition to these markets without infringing Microsoft's `right to innovate' requires a structural rather than a behavioural remedy: Microsoft is a `serial recidivist': there is a long history of bevioural remedies that have failed to deter Microsoft from effective exploitation of its monopoly position.

The DOJ argued strongly for a break up of Microsoft in the trial courts. If it no longer believes that Microsoft's monopoly position requires effective legal limits, it has a duty to make its reaons for beliving this public. Its failure to do so is a very gross failure of its ethical and legal mandate to protect competition from monopoly abuse in the computer industry. I believe that the courts should pursue a structural remedy, ie. a breakup of Microsoft, irrespectively of the DOJ's new position in the proposed settlement.

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